

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Councilmember Brian Maienschein on May 12, 2006

DATED: June 7, 2006

On Friday, May 12, 2006, Benito Romano interviewed Councilmember Brian Maienschein in Willkie Farr & Gallagher LLP's ("Willkie") capacity as counsel to the Audit Committee. Councilmember Maienschein was represented by counsel, David Bayles and Kimberly Greer, of Morrison & Foerster. Troy Dahlberg of the Audit Committee, and Sharon Blaskey and Heath Rosenthal of Willkie were also in attendance. The interview took place in a conference room on the third floor of the San Diego City (the "City") Administration Building and lasted approximately three hours.

The following memorandum reflects my thoughts, impressions and opinions regarding our meeting with Councilmember Maienschein, and constitutes protected work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

At the outset of the interview, Mr. Romano explained to Councilmember Maienschein that Willkie represents the Audit Committee created by the City Council. Mr. Romano also stated that although the material discussed during the interview would be treated as privileged, covered by either the attorney-client privilege or the work product doctrine, in the likely event that Willkie issues a report, the privilege would be lost. In addition, the City can waive the privilege even if no report is written. Mr. Romano further explained that because the Audit Committee is cooperating with other investigations, we may be sharing information with the U.S. Attorney's Office, the SEC and the City's outside auditor, KPMG, and therefore Councilmember Maienschein should be as accurate and truthful as possible. Mr. Romano also asked that the contents of the interview be kept confidential, and emphasized that Councilmember Maienschein could seek clarification of any question at any time.

Background

Councilmember Maienschein said he is currently a City Councilmember representing the 5th district of the City of San Diego. Councilmember Maienschein stated that he was first elected to the City Council in November 2000 in an unopposed election and was seated in December 2000, succeeding Barbara Warden. Mr. Romano asked whether the issues surrounding SDCERS were part of his 2000 campaign. Councilmember Maienschein responded that the pension problem was not an issue in his campaign. Rather, traffic problems in his

district was one of the major issues of his 2000 campaign. Councilmember Maienschein stated that he was re-elected in 2004. Councilmember Maienschein said that he received his law degree from California Western, San Diego. He worked for a small firm in Escondido, California for a couple of years and then for an insurance defense firm in San Diego until he was elected to the San Diego City Council in 2000.

Mr. Romano asked whether Councilmember Maienschein received any training when he became a Council member, and Councilmember Maienschein responded that he did not. Mr. Romano then asked if he conferred with the other Council members for training purposes at that time. Councilmember Maienschein stated that although he did not talk with other Council members to receive training, he did note that Council members would educate one another on issues specific to their own district. Mayor Dick Murphy assigned Councilmember Maienschein to the Land Use and Housing and the Public Safety committees when he began serving on the Council.

Budget

Mr. Romano asked about the timeline of how the budget gets approved. Councilmember Maienschein explained sometime in March or April the City Manager would unveil his budget and hearings were held on the budget. The Council had to adopt the budget by June 30th. Councilmember Maienschein said his first exposure to the budget process occurred in January 2001. Mr. Romano asked when Councilmember Maienschein was able to first exert influence over the budget, to which Councilmember Maienschein responded that he did not have an opportunity to influence the budget during the first six months of his term. The first time he and the other newly-elected Council members could impact the budget was in July 2001.

Councilmember Maienschein explained that the City Manager prepared the budget. He would provide the Council with approximately six binders on a Friday and briefly discuss them. The following Monday the Manager would unveil the budget, but Councilmember Maienschein did not recall what the Manager would say at that time. Mr. Romano asked if the budget would contain the Manager's projections for revenue, and Councilmember Maienschein stated that it did. He also said that while he initially thought that City Manager Michael Uberuaga's projections were accurate and reasonable, as he learned more about the budget and the City, he subsequently stopped believing a lot of Mr. Uberuaga's budget projections. Nevertheless, Councilmember Maienschein felt that he could not tell Mr. Uberuaga what he thought the budget should be. He said that if he could get the support of four other Council members, they could move the budget up or down, within reason. Councilmember Maienschein said the specific budget requests and priorities of the Council members were subjective, and could differ from what the Manager included in the budget.

Mr. Romano asked whether and how the Council engaged in a "give and take" with the Manager about what the budget should be, and Councilmember Maienschein said that this would occur in open session. Mr. Romano then asked if the Council would know how much had been spent on each issue the prior year. Councilmember Maienschein said yes, insofar as it appeared in the Manager's list of the previous years expenditures or in the previous year's budget. However, Councilmember Maienschein stated that he thought that the Manager frequently "hid the ball" with regard to the budget. As an example, he said that the Manager

would create positions that had to be budgeted for when those positions did not exist. Councilmember Maienschein said he was highly critical of this inaccuracy.

Mr. Romano asked whether retirement benefits would be listed as a current expense, particularly in the years in which Meet and Confer occurred. Councilmember Maienschein responded that the budget would not contain projections beyond the upcoming year. He also said he called for a two-year budget at some point soon after he was elected because he thought it was a more accurate and certain way to prepare a budget. Councilmember Maienschein said that he probably made this request publicly. Mr. Romano asked if he recalled if any other Council members shared this view, and he stated that he did not recall.

The Blue Ribbon Committee and The Pension Reform Committee

Mr. Romano showed Councilmember Maienschein Exhibit 1, a copy of the February 2002 Blue Ribbon Committee ("BRC") report and Exhibit 2, a copy of a SDCERS presentation, dated February 6, 2003, responding to the BRC report. Mr. Romano asked if Councilmember Maienschein played a role in the selection of the members of the BRC, and Councilmember Maienschein said that he did not. Mr. Romano then asked if he recalled why the issuance of the BRC report was delayed, and he stated that he did not. In response to a question asked by Mr. Romano about whether he was on the Rules Committee in February 2002, Councilmember Maienschein said that he was not but that he learned about the contents of the BRC report around that time. Mr. Romano asked how Councilmember Maienschein learned about the BRC report, and he stated he probably heard about it because of the "buzz" that surrounded its issuance. Mr. Romano asked if Councilmember Maienschein recalled discussing any pension issues with Richard Vortmann (Board Member) or if he heard that the BRC report would have been damaging to the bonds issued to raise money for the new Padres ballpark (the "Ballpark"). Councilmember Maienschein said that he did not recall either of these.

Mr. Romano next inquired whether Councilmember Maienschein was on the Rules Committee in February 2003, and Councilmember Maienschein stated that he was. Mr. Romano asked if he recalled that Mayor Dick Murphy referred the BRC report to SDCERS for a response, and he said that he did not recall. Mr. Romano asked Councilmember Maienschein why Mayor Murphy made that referral, considering that although it was the SDCERS Board's job to administer the fund, it was the City's job to solve problems with the fund. Councilmember Maienschein did not have an answer. Councilmember Maienschein stated there was not a sense of crisis regarding the pension system around the time the BRC report was issued or when SDCERS gave its response to the BRC report. He said that the pension problem at that time was viewed as an issue that was solvable.

Mr. Romano also showed Councilmember Maienschein Exhibit 3, a February 12, 2003 e-mail from John Rivera (Councilmember Maienschein's Chief of Policy) to Lance Witmond (Councilmember Maienschein's Chief of Staff) attaching a document prepared by Mr. Rivera for a Rules Committee meeting held that same day. Councilmember Maienschein said that Mr. Rivera is his current Chief of Policy; Mr. Rivera was assigned to prepare the docket briefing for the Rules Committee meetings, and that the document they were looking at was a brief. Councilmember Maienschein said he recalled the meeting. Mr. Romano directed his attention to the third page of the document which listed questions and talking points.

Councilmember Maienschein stated that he recalled asking questions at the Rules Committee meeting, but could not remember what those questions were. He said he guessed he asked a sampling of five or six questions that were a summary of the questions listed on Mr. Rivera's brief, and noted that he could have sent the brief to Mr. Uberuaga or posed the rest of his questions to the Manager at a later point in time. He said his goal was to make sure Mr. Uberuaga understood that he was concerned about the pension system. Councilmember Maienschein stated that he could not recall anyone answering the first question in Mr. Rivera's brief concerning whether MP-2 violated the City Charter. Mr. Maienschein also said he asked about the *Corbett* settlement.

Mr. Romano asked Councilmember Maienschein if Mr. Rivera understood the pension issues at the time he wrote the brief. Councilmember Maienschein said he thought Mr. Rivera was intelligent, but he did not have any special training about pension issues at that time. Mr. Romano asked if it was possible that he sent a copy of the brief to Mr. Uberuaga. Councilmember Maienschein said that was possible, and that Mr. Uberuaga had said he was going to review the Council's questions and get back to them. Mr. Romano then read a part of Mr. Rivera's e-mail which stated that the brief "asks several questions which establish [Councilmember Maienschein] as fiscally responsible, position him to support the plan if answered satisfactorily, and also position him to vote no later if the plan supported by his colleagues is too questionable." Mr. Romano asked Councilmember Maienschein if he took the position that was stated in the e-mail, and Councilmember Maienschein responded that he did. He also stated that he knew that the pension underfunding was a significant issue. He wanted to hear what Mr. Uberuaga's plan was to fix the pension problem and get answers to his questions. Councilmember Maienschein said he wanted the opportunity to say Mr. Uberuaga's plan was not satisfactory if his concerns were not addressed. Mr. Romano asked if the brief was the result of discussions he had with Mr. Rivera, and Councilmember Maienschein said that it probably was. Mr. Romano asked if he had heard Diann Shipione's (member of the SDCERS Board) speech about MP-2 by the time of the February 12, 2003 Rules Committee meeting, and he said that he had.

Mr. Romano asked whether the City Manager had been asked to reply to the SDCERS response to the BRC report. Councilmember Maienschein recalled that at the end of the meeting, the Rules Committee asked Mr. Uberuaga to come back with a plan to deal with the pension issues. Mr. Uberuaga said he was going to review and respond to the Council's questions. Mr. Romano asked if Councilmember Maienschein knew why the Council never saw Mr. Uberuaga's response, and he stated that he did not know why. Councilmember Maienschein said that the other Council members were also agitated by the delay in his response, and that Mr. Uberuaga was hearing complaints from some, if not all, of the Council members. However, he did not recall if the Council discussed their frustrations with each other. Mr. Romano asked if it was possible that the failure to respond could have resulted from attempts to not publish information damaging to the *Gleason* litigation. Councilmember Maienschein stated that was possible, but that he could not recall if that had been the case.

Mr. Romano asked how the Pension Reform Committee ("PRC") was created. Councilmember Maienschein said he felt as if Mr. Uberuaga didn't respond to his questions. He could not remember who came up with the idea of the PRC, but the goal was to have a committee parse through the complex issues relating to the pension system. Councilmember

Maienschein said he received the PRC Report and said the PRC's projection about the pension was different than that of the BRC report and the subsequent SDCERS response, which was appreciated by the Council. Councilmember Maienschein said the description of the pension system problem in the BRC report was different than what SDCERS told the Council. Councilmember Maienschein recalled that by the time the PRC report was issued, it was clear to the Council members that they were either intentionally or unintentionally misled or "lied to" about the state of the pension.

Disclosure

Councilmember Maienschein stated that his chief of policy would review the bond and related disclosure documents and then prepare either a brief or a "matrix" that included a docket number, recommended vote, what district it effects, and what the related issues were. Councilmember Maienschein said he would review the brief or matrix in conjunction with the "1472 Form." He said the 1472 Form was critical to him because it would list all of the individuals who had signed off on the bond documents, including the City Manager, City Treasurer, City Attorney and outside bond counsel. Councilmember Maienschein believed that Leslie Girard signed the 1472 Form on behalf of the City Attorney's office, but he just looked to make sure that somebody from that office had signed it. Councilmember Maienschein explained that he relied heavily on the 1472 Form because its signatories had expertise that he and his staff did not. He stated that he and his staff were not bond counsel and did not have particular training or education in areas relating to bond disclosure. Mr. Romano showed Councilmember Maienschein Exhibit 4, a copy of the Ballpark bond offering document and asked if his staff person read the document himself. Councilmember Maienschein said he only expected his staff to review the bond documents to the best of their ability to make sure the bonds were appropriate, which he thought they did. Mr. Romano asked if he was aware of any document directing the reader's attention to particular parts of the bond documents, and Councilmember Maienschein said that he was not aware of any such document.

Mr. Romano then showed Councilmember Maienschein Exhibit 5, an October 29, 2001 letter from the Bryan Cave law firm to Mr. Girard (the "Disclosure Letter") which Mr. Girard forwarded to Mayor Murphy and the Council on November 6, 2001 for discussion at closed session. Councilmember Maienschein said he recalled the letter only from seeing it during the recent investigations relating to the pension underfunding. He said he remembered the closed session at which Mr. Girard spoke to the Council about the Ballpark bonds and the possibility that a lawsuit would be brought in relation to those bonds by Bruce Henderson. Councilmember Maienschein said he thought that Mr. Girard was the only person to talk to the Council about this topic, and that the attorneys from Bryan Cave merely sat in the audience. However, he said it was possible that the Bryan Cave attorneys spoke. Mr. Romano asked if Paul Webber (outside bond disclosure counsel from Orrick) had been present at the meeting. Councilmember Maienschein said he believed Mr. Webber was at every ballpark closed session, so he assumed that Mr. Webber was at the November 6, 2001 closed session.

Councilmember Maienschein said Mr. Girard told the Council at the closed session that the City had been sued approximately 14 times in relation to the Ballpark, and that the next time the Council took any kind of action related to the Ballpark, Mr. Henderson would sue the City. Mr. Girard said that the upcoming open session would allow the City to respond to

such a lawsuit from Mr. Henderson. He provided the Council members with questions to ask in open session about the ballpark bond disclosure, and told them not to stray from the topic of the Ballpark in order to avoid a possible suit by Mr. Henderson. Mr. Romano asked if the Disclosure Letter was discussed at the closed session. Councilmember Maienschein stated that he did not recall a discussion of the Disclosure Letter, but he did not believe it was discussed. Councilmember Maienschein said he was certain that nobody "walked" the Council through the Disclosure Letter.

Councilmember Maienschein said Mr. Girard was concerned with ongoing litigation with Mr. Henderson. He was not aware of a specific threat of litigation by Mr. Henderson and was unclear as to how Mr. Girard thought the closed session would help avoid such possible litigation. Councilmember Maienschein believed that there were questions asked, but he did not recall what they were or whether he had asked any of them. Mr. Romano asked if Councilmember Maienschein thought it would have been a good idea for the City Attorney's office to help the Council understand the bond documents, and Councilmember Maienschein said that it would have been helpful. However, he said that the only issue that had been discussed at the meeting was the concern that the City would be involved in another series of lawsuits with Mr. Henderson. He said the meeting was a "litigation strategy" session. Mr. Dahlberg asked if it was Councilmember Maienschein's understanding that it was not the purpose of the session to educate the Council on securities law, and Councilmember Maienschein stated, "exactly."

Mr. Dahlberg asked if Councilmember Maienschein thought there was a heightened sensitivity regarding the Ballpark bond issuance, and Councilmember Maienschein stated that there was not. Mr. Dahlberg asked if Councilmember Maienschein spent more time reading the Ballpark offering than other offerings, and he said that he did not. When asked by Mr. Dahlberg if he felt that the November 2001 presentation in closed session left with him feeling that he should review the Ballpark offering more closely than other offerings, Councilmember Maienschein said that it did not because the purpose behind the meeting was to protect against litigation from Mr. Henderson. Mr. Romano asked Councilmember Maienschein if he recalled when the Ballpark bonds were voted on by the Council, and Councilmember Maienschein said that he did not. Councilmember Maienschein could not recall whether he asked any questions about the ballpark bonds when they were voted on.

Councilmember Maienschein said Mr. Girard did not meet with him to personally review the Ballpark bond disclosure documents. Mr. Romano asked whether they met around the January 2004 time period in connection with the voluntary disclosures the City filed. Councilmember Maienschein said Mr. Girard did visit him in his office in early 2004 to discuss the voluntary disclosures. Mr. Romano asked whether Ed Ryan (City Auditor and Controller) had attended those sessions. Councilmember Maienschein stated that Mr. Ryan, who had been at every closed session meeting, did not attend these meetings. Councilmember Maienschein also stated that Mr. Girard referred to "typos" in the disclosures, and he believes that Mr. Girard went to each Council member's office and told them about those "typos." Mr. Dahlberg asked whether Mr. Girard was the person who should have been explaining the disclosure issues to the Council. Councilmember Maienschein said the City Attorney's office did not have a person who was an expert on disclosure, and therefore Mr. Girard seemed to be an appropriate person to have those conversations.

Mr. Romano showed Councilmember Maienschein Exhibit 6, a May 7, 2003 letter from Councilmember Maienschein to Mr. Uberuaga, copying Mayor Murphy and the Council, in which he requested that Mr. Uberuaga present to the Council a plan, within thirty days, to conduct an independent audit of SDCERS. Mr. Romano asked Councilmember Maienschein what prompted him to write that letter. Councilmember Maienschein said he had questions and concerns over the pension. Councilmember Maienschein said his request for an audit reflected his concern that there was something wrong with the pension numbers. Mr. Romano asked Councilmember Maienschein if he recalled whether the *Gleason* litigation was a trigger for this request to Mr. Uberuaga, and Councilmember Maienschein said that it was not. Councilmember Maienschein did not recall other Council members making similar recommendations to Mr. Uberuaga or discussing his request with them.

MP-2

Councilmember Maienschein said his first Meet and Confer session occurred in the Spring of 2002. Mr. Romano showed Councilmember Maienschein Exhibit 7, an April 26, 2002 closed session Meet and Confer agenda for April 29, 2002. Mr. Romano asked if Councilmember Maienschein recalled the pension issue being discussed in the spring 2002 Meet and Confer, and Councilmember Maienschein stated that he did not. Councilmember Maienschein said he became aware of the retirement issue when the investigations began.

Mr. Romano showed Councilmember Maienschein Exhibit 8, a June 14, 2002 memorandum from Cathy Lexin and Elmer Heap to Mayor Murphy and the Council discussing the recently concluded Meet and Confer session in which the Council had approved benefit enhancements with a contingency feature. Councilmember Maienschein stated that he did not recall seeing this memorandum or anyone calling his attention to the funding situation, the "linkage" between the enhanced benefits and the City's contribution break, or the term "quid pro quo" as discussed in the last paragraph on page two of that memorandum. He said he believed the June 14 memorandum was not provided to the Council in their meeting packets. Councilmember Maienschein also said that if there was a presentation involving the pension issue made to the Council, such a presentation would have been comprised of only one or two slides, not 75 slides as City Attorney Michael Aguirre has claimed.

Councilmember Maienschein then added that Cathy Lexin (City Human Resources Director) negotiated with the unions and provided the Council with periodic updates. Mr. Uberuaga ultimately reached an agreement with the unions and brought that agreement to the Council for its approval. Councilmember Maienschein explained that Ms. Lexin and Mr. Uberuaga did most of the talking during the 2002 Meet and Confer process. Mr. Dahlberg asked if each Council member would have particular reasons for attempting to get certain unions benefits passed, and Councilmember Maienschein said that they would. Mr. Dahlberg asked if Councilmember Maienschein had any connection with any particular union at that time. Councilmember Maienschein explained that during the 2002 Meet and Confer process, he did not know what any particular labor group's concerns were because it was his first time going through the process.

Mr. Romano next showed Councilmember Maienschein Exhibit 9, a June 23, 2002 e-mail from Councilmember Byron Wear to Ms. Lexin, Mayor Murphy, Councilmember

Maienschein and other Council members, in which Councilmember Wear stated to Ms. Lexin that she should be prepared to answer why she advised the Council "to go down this policy path if [she] did not have some degree of assurance and the timing of the decision making process from the Retirement Board in advance." Councilmember Maienschein did not recall the discussion described in that e-mail or the e-mail itself. Mr. Romano showed Councilmember Maienschein Exhibit 10, a July 8, 2002 memorandum from Ms. Lexin and Mr. Heap to Mayor Murphy and the Council entitled "Meet and Confer: Contingent Retirement Benefits and Proposal to SDCERS" and discussing the anticipation of a motion by a Board member to amend the proposed MP-2 to eliminate the request to remove the trigger. Councilmember Maienschein did not recall that memorandum or having received it.

Mr. Romano asked Councilmember Maienschein if he recalled the November 18, 2002 Council meeting at which Diann Shipione expressed her disapproval of MP-2, and Councilmember Maienschein stated that he did. Councilmember Maienschein said that although he did not know Ms. Shipione at that time, he and everyone else at the Council session knew her husband. He said it was well known that Ms. Shipione's husband, who had frequented the political scene, did not like Mayor Murphy. Mr. Romano asked what Councilmember Maienschein's reaction was to Ms. Shipione at that Council Meeting. Councilmember Maienschein explained that he took interest in what Ms. Shipione was saying because she was on the SDCERS Board and seemed credible. Mr. Romano asked if Ms. Shipione seemed credible in both her oral and written presentations. Councilmember Maienschein stated that she did and that she seemed in control in both situations. He also stated his belief that Ms. Shipione's presentation was a "surprise" to the Council.

Mr. Romano showed Councilmember Maienschein Exhibit 11, the minutes of the November 18, 2002 Council meeting and referred him to the discussion of the indemnification of the SDCERS Board on pages 39 through 40. Councilmember Maienschein did not recall a discussion about why the Board would need to be indemnified. Mr. Romano asked whether anyone asked why the Board was requesting indemnification at that time, and Councilmember Maienschein responded that they did not. Mr. Romano then asked whether any Council member brought up the fact that the Board might already have been protected under state law, and Councilmember Maienschein stated that they did not. Councilmember Maienschein explained that, at that time, it did not seem unreasonable to provide the Board with indemnification. He also said it appeared that the written information reflected in the Council meeting minutes was sufficient and gave a reasonable explanation as to why indemnification would have been okay. However, Councilmember Maienschein said that he now questions the decision to give the SDCERS Board indemnification.

Mr. Romano asked if Councilmember Maienschein thought that there was a linkage between the enhanced pension benefits and the City's contribution break. Councilmember Maienschein said "absolutely not" at the time of MP-2, and noted that Ms. Lexin never spoke about a contingency. Mr. Dahlberg asked Councilmember Maienschein for his understanding of MP-2. Councilmember Maienschein stated that he believed MP-2 was a continuation of MP-1, and compared it to a home refinancing. He said that the Council was told that MP-2 would eventually fully fund the pension system. Mr. Romano asked if there would have been anything wrong if there had been a linkage of the benefits to the contribution break. Councilmember Maienschein stated that at a minimum he would have wanted an explanation as

to why the benefits needed to be linked to the contribution break because they were two separate issues that were not normally linked together. He also said he would have said that they should not be linked.

Mr. Romano showed Councilmember Maienschein Exhibit 12, a November 18, 2002 letter from Ms. Shipione to Mayor Murphy and the Council. Councilmember Maienschein said that this was the letter that Ms. Shipione handed out at the November 18 Council meeting. He explained that an individual may make a public comment at Council meetings whether they are on the agenda or not, for three minutes. Councilmember Maienschein did not recognize the handwritten notes on Ms. Shipione's letter. Mr. Romano then showed Councilmember Maienschein Exhibit 13, a December 6, 2002 Memorandum from Assistant City Manager Lamont Ewell to Mayor Murphy and the Council responding to Ms. Shipione's November 18 letter. Councilmember Maienschein recalled reading both Ms. Shipione's letter and Mr. Ewell's response, which said that Ms. Shipione's allegations were incorrect.

Mr. Romano asked what Councilmember Maienschein thought of Mr. Ewell's response. Councilmember Maienschein stated that he thought Mr. Ewell's response was reasonable. Mr. Romano noted that Ms. Shipione stood up in a City Council meeting and used words such as "corrupt" and "illegal," and questioned why her allegations were dismissed. Councilmember Maienschein stated he never thought that Ms. Shipione was dismissed and explained that Mr. Ewell provided her with a respectable, detailed and substantive response. He said he thought she was treated seriously and was given attention by the Council. He did not offer his opinion of the City Manager office's feelings regarding Ms. Shipione. Councilmember Maienschein noted that he had never heard anything negative about Ms. Shipione, and any corruption alleged by Ms. Shipione would be up to the US Attorney or the City Attorney to investigate, because the Council could not subpoena the SDCERS Board members. He said he thought that Mr. Ewell's response turned out to be inaccurate.

Mr. Romano asked why, in the face of serious allegations by Ms. Shipione against her fellow Board members, the only response from the City was a letter from Mr. Ewell. Councilmember Maienschein said that her allegations continued to be dealt with in due course over time. For instance, he stated that the investigation into the pension underfunding and Ms. Shipione's allegations continued after Mr. Ewell's response through the PRC. Mr. Romano also showed Councilmember Maienschein Exhibit 14, a December 31, 2002 letter from Ms. Shipione to Mr. Ewell copying the Council and others, and Councilmember Maienschein agreed with Mr. Romano that Ms. Shipione had a lot to say that was negative.

Mr. Dahlberg asked Councilmember Maienschein whether MP-2 was simply a means for accomplishing a political objective, and Councilmember Maienschein responded that it was not. Mr. Dahlberg asked whether the Council learned about the costs of the benefits being granted through MP-2. Councilmember Maienschein stated that the Council members were provided with numbers to give them an idea of what the benefits would cost down the road. Mr. Dahlberg asked if the labor unions visited Councilmember Maienschein during the 2002 Meet and Confer process. Councilmember Maienschein said that it was possible this had occurred and noted that he had "slightly more of a connection" with the firefighter's union than the others because there had been a lot of large fires in his district.

Mr. Romano asked Councilmember Maienschein whether he knew Ron Saathoff (SDCERS Board Member - President of Local 145). Councilmember Maienschein said that he knew him because Mr. Saathoff was around City Hall frequently due to the presence of a large number of issues relating to firefighters. He explained that he dealt with Mr. Saathoff on some issues, such as requests by Mr. Saathoff for more firetrucks, but he did not negotiate with him. Councilmember Maienschein said that just because Mr. Saathoff said that the firefighters needed something did not automatically mean that he thought they really needed it. Mr. Romano asked whether he discussed pension issues with Mr. Saathoff, Ms. Lexin or Ms. Webster, and Councilmember Maienschein said that he did not. Mr. Romano then asked Councilmember Maienschein if he knew the extent of Mr. Saathoff's influence over the SDCERS Board, and he stated that he did not.

Mr. Romano next showed Councilmember Maienschein Exhibit 15, a calendar appointment for a lunch date he apparently had with Mr. Saathoff on or around February 26, 2003. Councilmember Maienschein did not recall the lunch date. Mr. Romano asked if the lunch date could have been made to discuss the retirement system, and Councilmember Maienschein said that it would not have been arranged for such a discussion. Councilmember Maienschein believed that the lunch had been scheduled because he had just been named chair of the Public Safety and Neighborhood Services Committee for two years, and in that capacity he was going to have to work with Mr. Saathoff. He said the lunch "probably" was a means for him and Mr. Saathoff to become better acquainted. Councilmember Maienschein said he thought Mr. Saathoff "smart," "very nice," "forceful," "well informed" and "prepared." Mr. Romano questioned whether Councilmember Maienschein dealt with Mr. Saathoff as an adversary or as a friend. Councilmember Maienschein responded that he did not question the motives behind why people would speak with him. Mr. Romano asked Councilmember Maienschein if he ever had lunch with the fire chief. Councilmember Maienschein responded that he had, but he could not recall if he ever went to lunch with Mr. Saathoff and the fire chief together. Mr. Romano inquired whether Mr. Saathoff used "political muscle" with Councilmember Maienschein, and Councilmember Maienschein stated that he did not.

Wastewater

Mr. Romano showed Councilmember Maienschein Exhibit 16, an October 25, 2001 memorandum entitled "Sewer Rates-Strength Based Billing" and Exhibit 17, an October 29, 2001 memorandum from Casey Gwinn and signed by Ted Bromfield (Senior Deputy City Attorney) to Ed Ketcham (Deputy City Clerk) discussing Revised Resolution R-295587. Councilmember Maienschein did not recognize the documents. Mr. Romano asked if he heard the term "BOD" (Biochemical Oxygen Demand) before, and Councilmember Maienschein stated that he had. Councilmember Maienschein said that he remembered voting on a sewer rate increase. Mr. Romano inquired whether Councilmember Maienschein knew what "Kelco" was. Councilmember Maienschein responded that Kelco was a company that did Kelp farming, and he noted that Kelco was not located in his district. Mr. Romano then showed Councilmember Maienschein Exhibit 18, a December 6, 2001 memorandum from the City Attorney to Mayor Murphy and the Council discussing the application of Article XIID to sewer fees and asked whether Councilmember Maienschein understood the effect of Proposition 218 on rates. He responded that he did not currently, but it was possible that he did comprehend Proposition 218's effects on sewer rates at the time of that memorandum.

Mr. Romano next showed Councilmember Maienschein Exhibit 19, a January 29, 2003 closed session report and asked whether he recalled discussions about whether the sewer rate structure complied with state law. Councilmember Maienschein said he only recalled general discussions about sewer rates, including the City Attorney discussing the legal issues surrounding such rates. Mr. Romano asked if he recalled Dennis Kahlie (Rate Analyst) or Kelly Salt (Deputy City Attorney) discussing rates at a Council meeting. He stated that he knew Ms. Salt but not Mr. Kahlie. Councilmember Maienschein said that he did not recall a discussion of sewer rates at any Council meeting by Ms. Salt or Mr. Kahlie.

Mr. Romano also showed Councilmember Maienschein Exhibit 20, a November 14, 2002 memorandum from Mary Vattimo (City Treasurer) and Ms. Salt to Mayor Murphy and the Council which recommended that the City Manager perform and implement the findings of a Cost of Service Study ("COSS") for the City's sewer rates and bring those rates in compliance with federal and state law. Councilmember Maienschein did not remember the meeting referred to in the memorandum during which the question was raised whether a COSS needed to be implemented. Mr. Romano asked if he recalled being informed that failure to bring sewer rates into compliance with state law would cause the forfeiture of state loans. Councilmember Maienschein said that he did not recall such a discussion. He also said he did not have any discussion with Ms. Salt about the City not being in compliance with State law. He also said he did not recall Councilmember Donna Frye taking interest in having a COSS discussed in open session.

Councilmember Maienschein said he recalled generally that, at some point, the Council voted in open session on a matter related to how rates should be calculated. He said the issue received some publicity because businesses said the rates should be calculated one way and the residents said they should be calculated another way. He recalled the Council voting on the issue, but he did not recall which way it voted. Mr. Romano showed Councilmember Maienschein Exhibit 21, a report on the water and wastewater fees and charges issued for the Mayor and the Council for the June 8, 2004 docket (and notes from that Council meeting), and asked whether Councilmember Maienschein had been approached by residential or business users of the sewer system. Councilmember Maienschein stated that he recalled being approached by users on both sides of the rate issue, but he could not remember specifics of those conversations.

Mr. Romano showed Councilmember Maienschein Exhibit 22, an August 4, 2003 letter from David McKinley to Larry Dolson. Councilmember Maienschein said that he did not know Mr. McKinley or Mr. Dolson. Mr. Romano then read from part of the letter that stated, "Our goal is to maintain the status quo by preventing the COD charge issue from moving forward," and that Councilmember Wear persuaded all Council members, except Councilmember Donna Frye, to vote in closed session to table the sewer COSS indefinitely, along with COD charges. Councilmember Maienschein said that the statement in the letter did not comport with his recollection of the events. He said he was not aware that Councilmember Wear was a champion of this issue either way. Councilmember Maienschein said he did not recall any sensitivity in regard to having a COSS completed. Councilmember Maienschein said he never knew that the City was at risk of forfeiting loans for not being in compliance with state law. He also stated his belief that the City would never be in the position where it would have to pay a \$300 million check to the state "tomorrow."

Mr. Romano showed Councilmember Maienschein Exhibit 23, a June 26, 2003 e-mail from Ms. Webster to Councilmember Maienschein, other Council members, and other recipients discussing a transfer from the Enterprise, Internal Service and Fiduciary Funds. Councilmember Maienschein said he "had no idea what that e-mail was about."

Impression of City Manager Uberuaga

Councilmember Maienschein stated that he did not like Mr. Uberuaga. From the time of his first campaign for City Council, Councilmember Maienschein thought Mr. Uberuaga was a "weak leader." Councilmember Maienschein said he told Mayor Murphy during their first meeting together that he thought that Mr. Uberuaga should be fired. Councilmember Maienschein said he initially thought that Mr. Uberuaga was a leader he would not vote for, but later he thought that Mr. Uberuaga was misleading him, either intentionally or because Mr. Uberuaga was so out of touch with his staff who were misleading him.

Remediation

Mr. Romano asked Councilmember Maienschein his thoughts on remediation. Councilmember Maienschein felt that a lot of remediation has already occurred in the City. He stated that the City has carried out all of Vinson & Elkin's suggestions. Councilmember Maienschein also said that the City's implementation of a strong-mayor form of government was the most important change that could have occurred. Councilmember Maienschein explained that the former form of government (in which the City Manager had administrative authority over the City) was very frustrating, and that Mr. Uberuaga used to "hide the ball" on everything. Councilmember Maienschein said that a mayor is an elected official who has to be more responsive to the Council. Previously, if a Council member had criticized a City Manager, he would have been taking a great risk that the City Manager would no longer help his constituents. He explained that an elected mayor is not in a position to act that way because the complaining Councilmember could then campaign against the mayor. Councilmember Maienschein said that how the government runs would be subject to who is elected mayor. He also said the Council is now able to contact City staff directly and exercise oversight over governmental agencies, enabling them to better represent their constituents. (In the past, the Council did not have any direct access to City staff.)

Mr. Romano asked if Councilmember Maienschein would change the City Attorney's office. Councilmember Maienschein said he thought the legal advice the City has received from the City Attorney has been horrendous. He said a better City Attorney would result from an appointment, as opposed to an election. Mr. Romano asked what Councilmember Maienschein thought about an independent body to screen judges and other appointed officials, including an appointed City Attorney should one ever come to exist. Councilmember Maienschein stated he thought that was a great idea. Mr. Romano also asked Councilmember Maienschein's thoughts on the independent budget advisor ("IBA"). Councilmember Maienschein stated that he thought that the IBA made a huge difference because she works for the Council, is an at-will employee, and is independent. Mr. Dahlberg asked how Councilmember Maienschein would feel about an independent auditor. Councilmember Maienschein responded that he did not support the idea of an independent auditor who is elected. However, he thought it would be a good idea to have an independent auditor who is appointed by

the mayor and works beyond the mayor's terms in office. Councilmember Maienschein stated that it would be great if the Council had its own attorney, but he does not think that would be fiscally feasible.

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